

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

JOHN MICHAEL MAIER, AS)	
TRUSTEE FOR THE DAHL'S)	
EMPLOYEE STOCK OWNERSHIP)	Case No. 4:17-cv-51
PLAN AND TRUST,)	
)	
Plaintiffs,)	DEFENDANT DAVID SINNWELL'S
)	ANSWER AND AFFIRMATIVE
v.)	DEFENSES
)	
DAVID SINNWELL, MARK A.)	
BRASE, ROSS L. NIXON, RICHARD S.)	
RISSMAN,)	
)	
Defendants.)	

Defendant David Sinnwell for his Answer and Affirmative Defenses to the Complaint and Jury Demand states as follows:

Parties

1. Paragraph 1 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.
2. Paragraph 2 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 2 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.
3. Paragraph 3 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 3 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

4. Paragraph 4 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 4 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

5. Paragraph 5 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 5 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

Jurisdiction and Venue

6. Paragraph 6 is admitted.

7. Paragraph 7 is admitted.

8. Paragraph 8 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

Facts

Dahl's ESOP: Creation and Purpose

9. Paragraph 9 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

10. Paragraph 10 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation. Defendant Sinnwell affirmatively states that he does not have access to the "series of plan agreements," and therefore, he cannot admit or deny many allegations in the Complaint that appear to be derived from the plan agreements. Defendant Sinnwell incorporates this response in the paragraphs below that contain allegations based on the plan agreements.

11. Paragraph 11 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

ESOP Fiduciaries: Advisory Committee, Trustee(s), and Plan Administrator(s)

12. Paragraph 12 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 12 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation..

13. Paragraph 13 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 13 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

14. Paragraph 14 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 14 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

The Trust Fund

15. Paragraph 15 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

16. Paragraph 16 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 16 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

17. Paragraph 17 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 17 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

18. Paragraph 18 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 18 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

Employee Eligibility and Contributions

19. Paragraph 19 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

20. Paragraph 20 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

21. Paragraph 21 is admitted.

22. Paragraph 22 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

Maintenance and Valuation of Accounts

23. Paragraph 23 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 23 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

24. Paragraph 24 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 24 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

25. Paragraph 25 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 25 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

Distributions

26. Paragraph 26 is admitted.

27. Paragraph 27 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 27 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

28. Paragraph 28 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 28 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

ESOP Fiduciaries

29. Paragraph 29 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 29 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

30. Paragraph 30 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

31. Paragraph 31 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

32. Paragraph 32 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

33. Paragraph 33 is admitted.

Actions Taken by Fiduciaries

34. Paragraph 34 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 34 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

35. Paragraph 35 is denied as vague (“in general”) and for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

36. Paragraph 36 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

37. Paragraph 37 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

38. Paragraph 38 is admitted.

39. Paragraph 39 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation. Defendant Sinnwell affirmatively states that a number of valuations were performed by outside firms, including Marshall Stevens and Prairie Capital Advisors, but Defendant Sinnwell does not possess copies of the valuations to be able to confirm the allegations in the Complaint.

40. Paragraph 40 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation. Defendant Sinnwell admits that the ESOP made distributions to former employees at times, but without the ESOP records, he cannot admit or deny the particular allegations in the Complaint.

41. Paragraph 41 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

42. Paragraph 42 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 42 is denied. Defendant Sinnwell denies that he caused the Dahl's ESOP to engage in any prohibited transactions.

43. Paragraph 43 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 43 is denied. Defendant Sinnwell denies that he caused the Dahl's ESOP to engage in any prohibited transactions.

44. Paragraph 44 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 44 is denied. Defendant Sinnwell denies that he caused the Dahl's ESOP to engage in any prohibited transactions. Defendant Sinnwell further denies the legal premise of the allegation in paragraph 44.

45. Paragraph 45 is denied.

46. Paragraph 46 is denied.

47. Paragraph 47 is denied.

48. Paragraph 48 is denied.

49. Paragraph 49 is denied.

Maier Hired as Trustee

50. Paragraph 50 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

51. Paragraph 51 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

52. Paragraph 52 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

53. Paragraph 53 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

First Cause of Action: Violation of 29 U.S.C. § 1106

54. Defendant Sinnwell incorporates by reference the responses set forth in paragraphs 1-53 above.

55. Paragraph 55 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 55 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

56. Paragraph 56 is denied.

57. Paragraph 57 is denied.

58. Paragraph 58 is denied.

59. Paragraph 59 is denied.

60. Paragraph 60 is denied.

61. Paragraph 61 is denied.

WHEREFORE Defendant David Sinnwell prays that this Court dismiss Plaintiff's action at Plaintiff's cost, and for such other and further relief as the Court deems appropriate under the circumstances.

Second Cause of Action: Violation of 29 U.S.C. § 1106

62. Defendant Sinnwell incorporates by reference the responses set forth in paragraphs 1-61 above.

63. Paragraph 63 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 63 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

64. Paragraph 64 is denied.

65. Paragraph 65 is denied.

66. Paragraph 66 is denied.

67. Paragraph 67 is denied.

68. Paragraph 68 is denied.

69. Paragraph 69 is denied.

WHEREFORE Defendant David Sinnwell prays that this Court dismiss Plaintiff's action at Plaintiff's cost, and for such other and further relief as the Court deems appropriate under the circumstances.

Third Cause of Action: Violation of 29 U.S.C. § 1104

70. Defendant Sinnwell incorporates by reference the responses set forth in paragraphs 1-69 above.

71. Paragraph 71 states a legal conclusion that does not require a response. Insofar as a response is necessary, paragraph 71 is denied for lack of knowledge or information sufficient to form a belief about the truth of the allegation.

72. Paragraph 72 is denied.

73. Paragraph 73 is denied.

74. Paragraph 74 is denied.

75. Paragraph 75 is denied.

WHEREFORE Defendant David Sinnwell prays that this Court dismiss Plaintiff's action at Plaintiff's cost, and for such other and further relief as the Court deems appropriate under the circumstances.

Fourth Cause of Action: Attorney Fees Pursuant to 29 U.S.C. § 1132

76. Paragraph 76 is denied.

WHEREFORE Defendant David Sinnwell prays that this Court dismiss Plaintiff's action at Plaintiff's cost, and for such other and further relief as the Court deems appropriate under the circumstances.

AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim upon which relief may be granted.
2. Plaintiff's claims are barred by 29 U.S.C. § 1113.
3. Plaintiff's claims are barred by 29 U.S.C. § 1108(c).
4. Plaintiff's claims are barred by the doctrine of estoppel.
5. Plaintiff's claims are barred by the doctrine of laches.
6. Plaintiff's claims are barred by the business judgment rule.

JURY DEMAND

Defendant Sinnwell requests that all issues be tried to a jury.

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the parties to this action by serving a copy upon each of the attorneys listed below on June 7, 2017, by

- | | |
|---|--|
| <input type="checkbox"/> U.S. Mail | <input type="checkbox"/> FAX |
| <input type="checkbox"/> Hand Delivered | <input type="checkbox"/> Electronic Mail |
| <input type="checkbox"/> FedEx/ Overnight Carrier | <input checked="" type="checkbox"/> CM / ECF |

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